

JOSEPH J. FARAH CIRCUIT JUDGE 900 SOUTH SAGINAW STREET FLINT, MICHIGAN 48502

June 30, 2008

ROOM 305 COURTHOUSE PHONE: (810) 257-3270

Corbin R. Davis, Clerk Michigan Supreme Court P.O. Box 30052 Lansing, Michigan 48909

Dear Clerk:



Please submit this letter for consideration by the Court regarding the proposed amendment of MCR 6.302.

I have no way to know what prompts the suggested revision of the rule, but such knowledge is unnecessary to what I believe is the more salient question. Does our system of handling criminal cases by guilty pleas properly allow room for guilty pleas with and without defense generated sentence proposals? In my view, the answer is yes and, as a result, I urge you to leave the present rule intact.

At present, no judge is <u>required</u> to entertain *Cobbs* (*People v Cobbs*, 443 Mich 276 [1993]) pleas and no judge is <u>forbidden</u> from doing so. The new rule would alter the latter category. While there might be concern over errant sentences generated by *Cobbs* proposals, in my view the existing court rules, statutes and case law provide ample protection so as to make <u>elimination</u> of the "*Cobbs* plea" unnecessary.

Turning first to the court rule, it is clear that any *Cobbs* plea entered pursuant to MCR 6.302(G)(3) is on the record in open court. As a result, judicial involvement is transparent, not secretive or camouflaged. This transparency is so much more salutary to our guilty plea process than the insalubrious former method of "nod and wink," unstated sentence agreements. Amendment of the rule risks return to some of the darker days of handling guilty pleas.

Since *Cobbs*, the legislature has codified sentencing guidelines which tailor sentence length and limit departure to a stated genre of departure reasons. A sentence viewed as having run amuck as too lenient (whether *Cobbs* generated or otherwise) is subject to appellate review at the People's request for insufficient departure reasons. The People, and correspondingly the victims of crimes, have clear access to dispute the sentence imposed. The sentencing guidelines legislation is an additional safeguard to those noted by Justice Boyle in her concurrence in *Cobbs*.

While I will simply allude to cases where lenient sentences were imposed and reversed by higher courts, I will note from *Cobbs* itself (and its tenets codified in the court rule) the attractive symmetry presented. No judge must entertain *Cobbs* proposals. A judge that does need not accept *Cobbs* proposals. A judge that entertains and rejects a *Cobbs* proposal simply announces so without further discussion as to sentence. On hearing the Court's pronouncement, a defendant may withdraw his plea and may face all original charges brought by the People. All through this process, the People may object and voice their and the victims' disapproval of a particular defendant's proposed sentence.

Additionally, an individual perspective from my court -- our *Cobbs* proposals, for the most part, must be in writing. They must contain a calculation of the sentencing guidelines. The proposal must be filed and served in advance of the pretrial conference. Our system has been very effective in resolving cases because, in large measure, pleading defendants' greatest concern is potential prison or jail exposure and, I am sure, state-wide experiences will yield similar rates of efficiency at case resolution. A significant threshold to *Cobbs* proposals in our county is that the accused must plead guilty to everything if a *Cobbs* proposal is to be made. This, too, is a benefit to the system as the People obtain convictions on all counts without the need for trials and the attendant investment of resources.

Finally, a specific comment on the proposed new court rule — I notice it retains prosecutor recommended sentences but not defense-generated proposals. This to me is a mistake. I appreciate the charges embody the People's case. Neither the accused nor the Court can order a reduction in or dismissal of charges in a guilty plea context. However, relatedly, neither the People nor the Court can stop the accused from walking into court and "pleading on the nose" to everything. If the People can recommend/propose a sentence so, too, should the accused be similarly able. So long as proposals are clearly and openly made and do not bind the Court, such a process should be open to both sides.

For the reasons stated above, I urge the Court not to amend the guilty plea court

rule as proposed.

Respectfully submitted,

Hoh. Joseph & Farah

JJF:kld